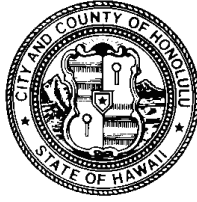


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Transcribed Formatted Meeting Minutes

Date and Place: April, 22, 2015
Standard Financial Plaza
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair
Michael A. Lilly, Esq., Vice Chair
Stanford Yuen, Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Victoria Marks (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A.S. DeCaires, Investigator
Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I
Geoffrey Kam, Deputy Corporation Counsel, Department of the
Corporation Counsel
Donna Y.L. Leong, Corporation Counsel
Daniel Hanagami, CFE, Chief Special Agent, Investigations
Division, Department of the Attorney General, State of Hawaii
Natalie Iwasa, CPA and Member of the Public

Absent: Stephen Silva, Commissioner

Transcriber: Gloria C. Takara

I. CALL TO ORDER

Chairwoman: Welcome everyone. Should we go around and introduce ourselves. I'm
Katy Chen, Chair, Ethics Commission.

Lilly: Michael Lilly Vice Chair.

Ms. Wong: Laurie Wong, Associate Legal Counsel.

Mr. Totto: Chuck Totto, Executive Director and Legal Counsel.

Suemori: Allene Suemori, Commissioner.

Marks: Vicky Marks, Commissioner.

Amano: Riki Amano, Commissioner.

Yuen: Stanford Yuen, Commissioner.

Deputy Corp Counsel Kam: Geoffrey Kam, Counsel to the Commissioner.

Ms. DeCaires: Letha DeCaires, Investigator for the Commission.

Ms. Bigornia: Kristine Bigornia, Legal Clerk I.

Mr. Hanagami: Dan Hanagami, Chief Special Agent from the Attorney General Office.

Ms. Parker: Lisa Parker, Legal Clerk.

Corp Counsel Leong: Donna Leong, Corporation Counsel.

II. FOR DISCUSSION: Status of the Minutes of the Open Session of the March 18, 2015 Meeting.

Chairwoman: Okay. Thank you. First on the item is the minutes of the open session of March 18th, 2015.

Mr. Totto: As with the February meeting in both for the executive session minutes and the open session minutes, we had them transcribed but we not had them reduce to normal minutes for review. And, the reason for that is staff has been up to their eyeballs in other matters. And, so we wanted to make sure that we had the information available should anybody want to look back on what was said or what was concluded, but we don't have them in regular minutes format.

Chairwoman: Okay. So, do you know when we could expect that?

Mr. Totto: No, I don't. I mean, I'm going to very frank with you today because it's— We have so many priorities that may push that down on the ladder. The main thing we want to make sure we got the transcription of what happened.

III. OLD BUSINESS – Confirming the date and time for the May, June, July and August Meetings.

Chairwoman: Okay. All right, so the next item is confirming the dates and times for the May 19th meeting and the June 24th meeting. Is everyone still available?

Lilly: Is it May 13th?

Yuen: Yeah, May 13th.

Chairwoman: Is that still good for everyone for 11:30?

Two unknown male voices: Yeah.

Chairwoman: Okay. So, we'll confirm that one. And the next one is June 24th, 11:30.

Lilly: Yeah, I won't be here.

Amano: June 24th?

Chairwoman: Do you want to change the date? That's more than a month, right? What about June 17th?

Marks: I can't make the 17th.

Chairwoman: Okay.

Lilly: Pardon?

Chairwoman: She can't make the 17th—

Lilly: Of what July?

Chairwoman: June.

Mr. Totto: They're looking for another possible date for June.

Chairwoman: So, what are that dates that you're—

Lilly: I leave that day. Oh, wait a minute, which day are we talking about?

Chairwoman: June 24th, that's a Wednesday.

Mr. Lilly: No, I take it back; I'm sorry. I leave that night, so I'm okay.

Chairwoman: Okay. So, June 24th, 11:30, is that good?

Yuen: Yeah.

Chairwoman: Okay. Let's confirm that. And then looks for a date for July, the week of the 20th. That'll be July 22nd and, it's still on a Wednesday.

Yuen: Okay.

Chairwoman: Is that good for everyone?

Yuen: Yeah.

Marks: I probably can't make it that day.

Chairwoman: Okay.

Marks: Could make the 23rd, Thursday, but I don't know if everybody else—

Chairwoman: That's good for me too, the 23rd.

Suemori I'm okay with the 23rd.

Amano: I'm good.

Yuen: Okay.

Chairwoman: Mike—

Lilly: That works.

Chairwoman: Okay. We'll switch it to July 23rd, Thursday, 11:30.

Marks: Thank you.

Chairwoman: And, we've never had issues about getting this room, right?

Ms. Parker: No.

Mr. Totto: We do actually, but if you folks are going to meet, we elbow people out of the way.

Chairwoman: Oh, okay. Okay. So, May 13th, June 24th and July 23rd 11:30—

Mr. Totto: And--

Chairwoman: Oh, sorry—

Mr. Totto: ...August-

Chairwoman: August. They were looking at the 19th of August.

Suemori: I'm okay for the 19th.

Yuen: Okay.

Amano: Good.

Lilly: I have an arbitration for two weeks there. So, count me out.

Suemori: So, August 19th

Chairwoman: Yes. Otherwise, we'd have to go two week away.

Suemori: Okay.

Chairwoman: Okay. 11:30, Wednesday.

Mr. Totto: And, I'll inform, I'll make sure staff informs Commissioner Silva--

Chairwoman: Okay, thank you.

Mr. Totto: ...the dates.

Chairwoman: All right. Let's go onto new business, Administrative News.

IV.A. NEW BUSINESS – For Discussion: Administrative News

Totto: With your indulgence, I'd like to take a few minutes and talk about just our general workload overview. I think it'll be helpful to Commissioners and give you a little bit more understanding of what we do because you folks see, I would say, the most important 5% of our work.

Chairwoman: Well, let me just preface what prompted this.

Totto: Sure.

Chairwoman: I guess, when I saw the agenda, I saw for both executive session and open session, I just noted that there is just some much administrative matters and virtually no cases, and it's sort of in a trend for a while, and I just ask Chuck to explain why are we so administrative heavy, and not we're not dealing with actual ethics cases, which seems to me why we're really supposed be here.

Totto: Right. I think this will explain part of the reasons—

Chairwoman: Okay.

Totto: ...and happy to have any discussion on it also. So, I'm just going to throw up a few things on the board.

The first thing, I just want you to look at the for tasks that we have, and the first one is training. And, you'll have to excuse my scribbles. But training shifted from being a couple thousand people, a thousand to two thousand City officers and employees a year to 8,500 every two years. And the 8,500 encompasses all City officers and employees. And, the goal is to do it every two years. The difficulty with that is although the staff doesn't have to go out and do training for each of those groups, we have to select a group training technique. The first time we did it, in fiscal years '13 and '14, it was basically using a DVD, off the shelf, it was kind of white bread, but it did a pretty good job of hitting on municipal ethics issues, and then we also had some follow-up and it was done in a, what we call, a train, trainer approach.

So, training is the first item and then we have request for advice; okay. Now, the vast majority of those are handled by staff because we've got a lot of good opinions and we've got pretty good precedent that covers almost all issues. If it's unusual—If it's a case of first impression or if it's something that's going to effect policy, we bring it to you folks. Like the federal credit union cases that we have later, regarding guidelines.

Now, this stays—I'm going to put 8,500 for the training every two years and then there request for advice is around 300 a year, okay. Now, we rarely write anything more than, very frankly, then a more a page in email. And, the reason for that is the people are asking us just want a concrete, can I, can I not, what do I have to do to make sure that I'm handling this correctly. So, we try to be very concrete also, and no elaborate a whole a lot but we do try to also educate them a little bit about, gift law requires this. And, just the other day, I had to make a guy give back a 50" TV that he won in a drawing, but it was from a vendor that he has to review all the time; to determine whether or not the vendor should get a contract. So—anyway, sometimes we have to be hard noise. Most of it is pretty straight forward.

The third area is what I'll call Legislation and Guidelines. This used to be much more (inaudible). The last few years because of the increasing work load with complaints requiring investigation, we dropped off on this, and we have had couple guidelines come through, notably the one that you will be looking at later today about the credit unions. But the big guidelines such as the proper use of City resources, what's a misuse of City resources and those of types of things. It's been around for a good 10+ plus years and sometimes they're updated.

We like to do a lot more of this though. Guidelines are really important we think not only for the public and our constituents, the City officers and employees, but it's also helpful for us. So, if we have to go back, we'll—what's in the guideline,

what can we do, apply the facts to that and it makes it much more straight forward. They're guidelines, they're not rules, so people can diverge from them or come in and say, hey, in my case, I don't think this should be applied this way.

We used to also—The Legislation obviously is mostly at the council. I would say if any one time I have 10 bills or resolutions in my back pocket, but I haven't looked at my back pocket for a couple years, we just haven't had time to do this, but for instance, okay, why we don't actually put in the ordinances what are examples of the misuse of City property or City position, but we haven't gotten to that. So, this area is really lagging in the last couple of years.

The fourth area is what I call complaints requiring investigation. Now, I just want to give you a little of what this means. All complaints that we receive, and I use the term complaint just generically. You know, somebody calls up and says, you know, I think, so and so is doing this and that and is that right and so on. I don't mean it as a form of (inaudible) or anything, but when we look at the complaints or staff decides to open an investigation into something, the first thing we do is to vet the complaint. Does it actually state something that if it were true, would be a violation of ethics laws. So a lot of times we'll get somebody calling up and asking about what is really a discrimination case.

Now, you can say that because our 11-104 is so broad, we could even handle discrimination or we would have jurisdiction to handle a discrimination case, but we don't take that because we don't have the expertise and the equal opportunity office does, and that's their kuleana, so we let that go. So, you'll see that in any one year where we have maybe a hundred—I'll make this math easy for me. Say, we've to 90 complaints total, but actually we'll drop 30%, so that would bring us down to 60 complaints requiring investigation. Now, as you folks can imagine the level of complain or investigation varies, right? Sometimes it's very straight forward, and we can done with it in, you know, in two hours. And, if that's the case, great. But what we're seeing in the cases in the last two years, is higher and higher levels of complexity. Now, the complexity comes in with a numbers of different things. First of all, the key area is you'll see—We see a lot more cases where multiple witnesses are required for review.

We finished a case regarding a department. It was an old case from 2012. Letha interviewed at least 50 witnesses in that case. Now, our conclusion was we were not going to take it forward, and I don't to say why, but I don't want to get into, unless you folks want to talk about something in exec session, I rather not say or what department it was, but it took an immense amount of talking to different people to actually build picture. And, there were seven boxes filled with materials.

Ms. Parker: Twenty boxes—

Mr. Totto: Twenty boxes; okay. And maybe it was seven once we narrowed it down. So, some cases can be enormous like that and can take hundreds of hours of lawyer and investigative time. Others as I said, somebody sends—here's a copy of the email that was sent and somebody is asking for somebody's political help in a campaign through City email, that's pretty easy to just stop that right there.

So, our job for this is not just—We're not prosecutors. Our job is to clear or correct, and what I mean by that, our philosophy is, and I think our duty is, that if we get information and we conduct an investigation and we don't find that there is probable cause of a violation, we need to clear that person because sometimes it may be somebody at a very high level where it has gone to the press, not through us, but from somebody else, we need to clear them or maybe just a mid-level supervisor or a low level employee. But, any of you who have ever been investigated or had any matters where your concerned or been in a lawsuit or whatever, you gotta sword dangling over your head, and it's not comfortable, and it can really demoralize people to have to deal with that. So, we try to do the clear or correct as promptly as we can.

Now, the correct part means, well, what if we do find probable cause of a violation? Then we need to go into the formal proceeding, and that's when you folks will see our request to find probable cause, and then we will sent out a notice of alleged violation. And, that really kicks off the formal part of the case. But the investigation is anywhere between 95 and 100% completed at that point.

So, now you probably, well, what's the percentage there. In the last couple of years, I think we've had ten notice of violations. We've had 11 AOs, former advisory opinions that came up regarding claims of violations of the ethics laws. Some were found "yes" and some found "nos" and some were settled. But this is where this complaints requiring investigation is where a lot of times taken up. First of all by the investigator and secondly by the attorneys because we need to keep working with her to evaluate the I information, the evidence she's getting and to also to start looking into types of legal issues, they come up and conduct legal research.

Contested hearings is another area, contested case hearings. And, I apologize for my handwriting. We will probably have four this year, which is relatively high. And, the reason for that is we have at least in—Well, I can only say publicly, we have four matters where we've been unable to settle, and it looks like we will go to hearing. We will try to settle if we can. I mean, you know, if your resource strapped group—that's just another reason to settle, but we try to reach, you know, good accommodations where we can. And, this, of course, mean potentially more work for the Commission, you folks.

I talked a little bit—Now, one thing I have to make a correction. And, I apologize for a math error that I made. In Open 1, you saw an annualized figure that showed that we're going to go up like 118 or 117 complaints regarding

investigation this year, that's wrong. It's actually going to be like the 5-year average. It's going to more about 90. I used the wrong multiplier, I apologize, but we won't have another increase over what we've had in the last few years, but nothing is really declining. And, of course, as I mentioned, the complexity of the cases has been increasing. We have a very rough rule of thumb, which is standard, complex and super complex. And, Letha was telling me the other day that everything that she's been looking at the last year is super complex.

So, here we've asked for funding in fiscal year '15, '16. We haven't gotten any. We certainly got Kristie's position, and she's been a great help to us, not only just for doing legal clerk issues, but she's also a wiz at excel, and we do a lot of excel spreadsheet analysis. So, she's been very helpful there. But in terms of the area where we're hurting, we need investigators. We've only got one. Her contract has been problematic for the last couple of times and we have, of course, interviewed a civil service employee, but that didn't go well. There is another list that's going to be produced. It has to go the prosecutors; apparently have first pick. So, I don't know when we will get that list. I would assume maybe sometime in July, might be later than that.

So, we've looked at different things, and we do different issues. Some of these, as I mentioned, some of the minor cases they go back to the department for review and appropriate discipline and usually that's counseling or a letter of reprimand something like that. If the case looks like it's a type of thing where someone is going to likely, if we prevail, they'll likely be suspended without pay or terminated from this point. That will be the Commission's recommendation, then we try to keep those within the Commission, so we can take a look at what the most—how this should be done.

We use staff attorneys. Laurie and I will take a look at cases, not only the initial area where they're vetted to see whether or not they're within our jurisdiction, but we will also take over cases and sometimes investigate. Before Letha came on board we did a lot of our own investigation. The problem with that, it slows everything down. We're not as efficient as Letha and yet also we've been constantly looking at a case for two days and then dropping it because we've got a lot of other stuff to do for a month and coming back to the case and trying to start it up. It's very frustrating and very difficult. We're most useful directing the direction of a case and also legal research and identifying legal issues.

Now, we use private investigative services to the degree that we have funding for that. And, for example, is that I can talk about publicly, we've been given funds to look at the ORI case. Most of you, or some of you probably don't know what that is. I won't go into the details, but we are using a private investigative service for that. Again, limited by funding. Then, we have recently, at the request, of another government agency sent 10 open—well, some were open and some were closed of the 10 cases. Two of the government agency, I would prefer not to say

which government agency it is, in open session, because it may compromise their work.

Chairwoman: Okay.

Mr. Totto: I'm sorry?

Chairwoman: I just okay.

Mt. Totto: Okay, thank you. So, you're wondering why Dan Hanagami, the chief of investigator, Chief Special Agent from the Attorney's General is with us today. And, the reason is because the Attorney's General office and Dan in particular has offered their services, free of charge, to help us handle some of our investigations. And, we've entered into a loose agreement on this. And, I say loose because it's flexible. You know, we're on (inaudible) voyage right now, shake down cruise. We're getting some of the bumps out of the way. But, what we're doing Dan is allowing us to use the AG's investigators for administrative investigations, not criminal, just administrative investigations and for the attorneys and Letha does essentially supervise work. We've sent over, I think, five cases, one of which is already been concluded, and what I wanted to talk to you about—just give you the general approach. Let's see, the Commission may request investigative services from the investigation's division of the AG's on a case-by-case basis. The division expects that to be able to supply investigative services but the work request and the extent of division resources will be up to Dan's discretion. The services provided by the division will not be charged to the Ethics Commission. With his concurrence the EDLC, the ALC and our investigator will be able to direct the specific activities that the special agents. The information will remain confidential pursuant to Chapter 92F of HRS and also the section, ordinances that is applicable to that. They'll be discussing the coordination of case work on a regular basis to ensure we're efficiently and effectively working together. And Doug Chin, the Attorney General, has given us general approval for this arrangement.

So, this is a little experimental at this point, but we hope that it will work. And, I've invited Dan if you folks have any questions or maybe he can just make a small statement about why they think it's important to give us a hand where we're short resources.

Mr. Hanagami: Good morning, Commissioners.

Chairwoman: Good morning.

Mr. Hanagami: When this discussion first came about, this was when David Loui was the Attorney General. And, when Chuck discussed the not enough investigators, myself and Chris Young-Hew was the supervisor deputy Attorney General, met with Chuck and Laurie to discuss the shortage of investigative hours that Chuck

has. And, I brought—I discussed it with David Louie, and I explained to him that we as the State agency should offer resources to agencies who does not have it. It's just the type of partnership we do. We support each other in the investigative community. And, David had a strong stance in believing that corruption is at a level, and it might overflow, we should get involved. And, you know he gave his consent to this and when Doug came about, he had the same belief that we should be corruption at a State level. This is why, you know, right now we're getting a request to do an investigation from other state agency. And, you know, extend the resources that we have and the problem is to control it and consider manpower later. So, these other request coming in from different state agency, we handle it out as partners, and we offer the same thing to Chuck for us to deal with. And, whatever Chuck needs, we will supply the investigative resources. I don't manage anything. Chuck sets out the criteria, what's to be needed for this type of investigative services. My division is empowered to do both administrative and criminal. And, once something like this comes out, firewall comes up, nothing from administrative crossover to any criminal. And, I think—what I explained to Chief Kealoha, I sent him a letter that should criminal investigation comes up during an administrative, he has to make a determination if he's going to conduct or refer it over to us, but there's a process, that's how criminal cases get transferred from a City agency to us. Just as the same matter from Big Island. It's being requested for us to do and there's a process to turn it over.

So, whatever needs that Chuck has, we will try and accommodate him as best as we can. Okay.

Chairwoman: Thank you.

Mr. Hanagami: Thank you.

Chairwoman: We appreciate that.

Mr. Totto: Just a couple of things that I want to—We haven't announced as to the departments yet. We wanted to announce it to you folks. But there are couple of things. Obviously, we'll send out an email blast to the agent, department heads, etc. to inform them of this process and as we have been working on a few cases, the two things that are critical that we're making sure done in the introductory phase is when an investigator contacts someone who maybe a witness or a subject in a case, they're given the notes—excuse me, the Notice of Rights and Responsibilities, either for a witness or for subject depending who they are, that we use in our cases, one; and then No. 2, they're also getting a letter, a copy of a letter from me stating that these AG investigators are empowered to conduct an investigation, but if they have any questions, they can call Dan or they can call me. And, you know, I have to say, obviously the AG has a very potent effect, just knowing that somebody is from the AG's. We've had some questions and some comments, but so far has worked relatively well. But, I think next week, early next week, we're going to get together and kind of work through our SOPs, the

standard procedure we should be using in each one because we do our investigations a little bit differently then they do their investigations for administrative items. And, so we want to make sure we're doing it in a City way and necessarily in a State way.

Marks: I don't that beggars that can be choosers.

Mr. Totto: No, a helpful beggar.

Mr. Hanagami: We just want to make sure that we do fits into the criteria that Chuck needs because we may do our report writing a little different, but that's for us to do. And to service him, we just want to make sure that whatever criteria, how it's written up, how it's investigated. You know, we deal with the same basic unions at time, you know, we give whatever rights that's needed to the employee. By that time, they know they have their union reps over there. So, you know, it's just that when we, the finish product that goes to Chuck, it has to be in his liking because in his end product, he's going have to discuss it or argue before board or whatever. And, you know, we just want to make sure it's done properly.

Chairwoman: All right, thank you. So, you want to go to the agenda.

Mr. Totto: Yeah.

Chairwoman: Did briefly touch on the complaints and requests.

Mr. Totto: Yeah. So, this was to focus on both Item 1 the complaints and request for advice, and also Item 4, under the Administrative News, the Status of Investigative Services for the Commission. So, I think we can take care of those two at the website. Statistics evident and No. 3 is the stats of fiscal year 2016 budget request. The major issue that we were concerned about is couple of the council members suggested to reduce our investigative and consultant budget significantly, but we were able to get them withdraw that. So, I think they have made an overall \$1,500 reduction, which even for us budget is not going to hurt us too much. Other than that, we're going ahead. We didn't ask them for anything extra and nobody has volunteered to give us anything extra. But at least we're moving along.

Chairwoman: Okay.

Mr. Totto: And that brings me through Item A.

IV.B. NEW BUSINESS – For Discussion: Permitted Interaction group's Report Regarding Commission Lawyers' Salaries and Recommended Next Steps.

Chairwoman: Okay. So, Item B, Permitted Interaction Group's Report. Is that Mike Lilly? So, Commissioner Lilly and Commissioner Amano. So, which—Are we talking about the meeting with Donna?

Chairwoman: That's Item B. The Report Regarding Commission Lawyer's Salaries and Recommended Next Steps.

Lilly: Well, we had two meetings. We met with Donna Leong and Mayor afterwards. I thought it was a very—I think Rikki has the same feelings. It was very productive. One of the things that Donna was going to be issuing some kind of an opinion to the Mayor that he had authority to delegate to this Commission the authority to set salaries within the Mayor's budget authority. And, that would avoid sort of the clash that we taken the position by resolution that we have that authority. But if he's delegating that to us, you would have to do it on a yearly basis, then that certainly would be a very productive thing. And, the Mayor when we met with him, he seemed very open to doing that.

Amano: Yes.

Lilly: Seem like that was positive to him.

Amano: Well, it was pretty, I think, affirmative that he was going to do it going forward. We asked him about considering one retroactive year.

Lilly: We wanted to do not just 16, but him also delegate 15 to us well, which would go back to the beginning of 15, back to July. And, there was some discussion about setting precedents and things like that but the sense that we had from the Mayor was that as long it's within the same fiscal year, didn't seem like that was something he couldn't do, that he could have the authority delegated to us retroactively as long as it's within the fiscal year, which this would be. I don't if anything has happened since then. But that was the discussion about that.

He, and we agreed that Chuck salary should be under the Salary Commission.

Amano: That's by Charter.

Lilly: Right. But we have to go through a Charter thing to bring Chuck within the Salary Commission and then there were some discussion between Rikki and me about including the assistant legal counsel. I feel that both should be in the Salary Commission because otherwise the way it is set up now, her position is sort of going to come up against the barrier, and it's not going to have any further ability to advance. And, we've seen it where she's had her salary reduced because of decisions have been made. So, if you put it within the Salary Commission, then they are going to be paid equivalent from other attorneys and other departments of equivalent status.

Amano: I wasn't clear about whether or not the Deputy Corporation Counsel salaries are also part of the Salary Commission. Are all the deputies in your office part of the—

Corp Counsel Leong: You want me to give testimony now?

Amano: No, I just want an answer to the question.

Corp Counsel Leong: Yeah.

Amano: All the deputies?

Corp Counsel Leong: Yes. They're all set by Salary Commission.

Lilly: Yeah. I got the impression that the—And we would need the administrative support of going forward to the Salary Commission, have a chartered amendment. And I got the impression that he's supportive of that. But we need to continue further meetings, perhaps with the managing director to see what the next step is on that.

He also didn't seem to have a problem with the ALC's amount of the salary. We should be able to use the savings within this fiscal year to pay the shortfall for the assistant legal counsel, but the question is going to be what happens in fiscal '16, whether we're going to have enough money in the budget to be able to pay what would be the next increase, come into the next fiscal year. That's pretty much the summary of that. I thought both meetings were very pleasant and very productive as far as I'm concerned. Do you have any more, Rikki?

Amano: So, in short, we have sort of three separate issues. And, I think we also should invite Donna too report, if there's one from the Mayor's decisions on delegating his authority to us. But, to me, I wanted to focus on getting the dollars and seeing what we needed to do to get the dollars to where they're supposed to be.

The second issue is who gets to determine that. And, so that's where it became—The Commission has already decided, no, they can't decide. It's supposed to be the Mayor, blah, blah, blah, whatever it is. And, that's where we are sort of talking about that as well.

And the third issue is going forward, who gets to decide that. And, so the third issue actually to me is the easiest one. And, that is I don't think there's any disagreement that the ELC's salary should be under the Joint Commission. And, I think we can expect to get the Mayor's administration support in our efforts do that. There was no discussion, no disagreement. It was a 100% agreement. There was a discussion about the ELC because I did not enough information about the deputies, but now knowing that all the deputies are under the Joint Commission, I would agree that both ELC and the ACL should be under the Joint

Commission. We don't know what the Mayor's position is on that. We do know about the executive but not on the associate. So, that being the case, I would support that. That's the easiest peace.

The middle peace—Well, I think it was problematic, but hopefully with the Mayor's directive, it won't be problematic going forward. If he was delegating to us the ability to make the recommendation subject to the budget. So, that's going forward.

Chairwoman: For fiscal year—

Amano: FY16.

Lilly: 16.

Amano: Yeah. So, I think—And, we're waiting for something in writing. Going backwards FY15, you know, that's where the big hallowballoo is, but to me—So, there's a money issue, you know, which is how much money are talking about. Is there money there? And the other issue is who gets to say what? And, that's a bigger issue because Ember, in her authority as the managing director, whatever authority she was under at the time, made a decision that she made that call and she put a number into that budget space. So, this morning, I've been trying to figure out exactly what was going on, and Mayor did ask us really clearly, "well, what was the salary in chronological order?" And, I couldn't piece it altogether, but Chuck was kind enough this morning to make it clear for me. So, in FY13, I guess, they call it FY14—

Mr. Totto: Right.

Amano: The ALC's salary was \$70,224, then the EC gave a retroactive increase to \$78,996, the difference being \$8,772, which was paid by way FY14 savings, okay. In FY15, the budgeted salary was the new number, which is \$78,996, and there the Commission approved the increase to \$82,140, difference being three thousand somewhat dollars. And, that was also going to be funded by FY15 savings per discussion with the Budget and Finance Committee or office, but the increase has not been paid to date. We're still in FY15. For FY16, we wanted to have a budget—We put into the budget at a certain number was 88 or whatever got denied, something like that. With the 4% increase off the 82 and so that would be consistent with what we thought the deputies were making. However, this is where Ember stepped in and reduced that salary to \$80,378. So, you can see where the numbers are, how it fits in chronologically. I won't go to the explanations because that's too much cumbersome, and honestly it really throws me—I can't figure it out. And, I don't think to date, today, is relevant. I think today what's relevant is how do we take care of these numbers going forward.

So, after that, I don't what else to say. We did ask the Mayor whether or not he could help us get more money, and he was pretty tight about that because there is no more money. And, I think all of the departments have been asked to cut moneys versus increase. That's my recollection of what he said, and we don't have any definitive but my I note that corporation counsel is here, and I don't know if she's here to report.

Chairwoman: Donna, would you like to come forward and—

Amano: And, correct me if I'm wrong, I don't have any—

Corp Counsel Leong: Good afternoon Chair Chen and members of the Commission. Donna Leong Corporation Counsel. Thank you for having me report to you on behalf of the Mayor on this position, I mean on this matter.

I agree with Vice Chair Lilly that my conversation with your, what I call your group. I would've coined a better phrase for the whole City, but with your group as well as the meeting with the Mayor was very amicable. I know the Mayor very much appreciates the time the Commission has spent has been spending on this issue as well as the group meeting with him. I think that my recollection of what happened at the meeting with the Mayor is a little bit different from the group's recollection. I have a letter written to you that summarizes follow-up information with the Mayor. But I'd like to explain to you, I think, what my recollection was and the follow-up with the Mayor after the meeting that the group, and I had over there on April 6th. The discussion with the Mayor centered on the salary of the ALC. My recollection was that's all what we talked about. And, I know that none of us had the detailed information about things that had happened since November 13th on the ALC salary for fiscal years '14 and '15. So, none of us had the detailed information there.

What was important, however, to the Mayor was that the ACL be fairly compensated and realizing that there's a lot different methodologies that can be used to determine fair compensation. As a result of the meeting, I do know that as part of the conversation, the question of the salary commission was raised, I distinctly remember that the Mayor, as he sometimes is, became very contemplated. Because on an issue where you are asking for a change to the charter, especially to address one person's salary, you know, that gives you pause. It's not something that you immediately react to and that you can immediately agree to just because we're talking about basically the constitution for the City. So, my recollection is he became contemplated but there was no real response from him on that particular issue. I do think that this Commission—Okay, so Commissioner Amano when you refer to the Joint Commission, I think what you're referring to is the 2-stepp process to get that change effected in the Charter.

Amano: Uh-hmm.

Corp Counsel Leong: One is that the Charter Commission has met maybe two or three times so far, and they've been told by the State Office of Elections to their recommendation on Charter Amendments submitted to the office for publication on the ballot by August 2016. So, they are in the process of gathering recommendation from all comers, people of the City, the agencies, the Council members, whomever. And, I know, they would welcome a request from this Commission for any charter amendment that you might want to request of them. So, that's the first Commission that's meeting. They are currently meeting—

Marks: So, it's August 25th—

Corp Counsel Leong: 16.

Marks: 16?

Corp Counsel Leong: 16, yes. It's a very long process, and it's because after they gather based on the meeting I attended, their inaugural meeting and just hearing things, it's because the—The basic process is they gather a request or suggestions or recommendations. They gather them, they need to consider them and then they go out into the various communities to talk about them, to get comments and so forth. Then they decide what it is that they're going propose. And, I know that in the last Charter Commission, which was 10 years ago, a similar request asking for the salaries of the legal counsel to this Commission was made to the Charter Commission. I don't recall that it was ultimately put on the ballot or not—

Mr. Totto: No, no.

Corp Counsel Leong: Chuck says, no; okay, so, no. Chuck would know. And, that's what happened to that one. But it's the same process as the one 10 years ago. So, that's the Salary Commission issue.

With regard to the ALC's salary. The two takeaways that I had from the meeting of the Mayor that the group had requested, was No. 1 delegating to the Commission the authority to set the salary of the Associated Legal Counsel, and 2, retroactively adjusting (inaudible) salary for this current fiscal year, 2015, which runs from last July 1st, 2014 to June 30, 2015 of this year. So, those were the two tables.

At the meeting I recommended to Mayor that I thought there was a way to delegate that authority to the Commission to set the salary for the ALC, subject to the annual Mayor's directive that comes out, that's applicable to all excluded, exempt employees. Laurie is, the ELC's position is excluded, exempt position, and Mayor agreed to that. And, so (inaudible) will always be in the details.

I looked further and worked with DHR further about we would do this. There is one charter provision that obviously we have to comply with the charter provision and any ordinance provision, and that is the charter provides that any staff position for this Commission must be part of the position classification plan. Now, I'm not a labor and employment expert, so I've gotten a lot of education from the Department of Human Resources over the last few months. And, I understand that typically means that based on the job description that is submitted by either the Commission or Chuck to the DHR, they establish a pay classification, looking at comparable positions throughout the state, and they slot the position into that paid classification. And, in this particular case, the current position is slotted in SR-26. The concept they use—So, DHR informs him, and maybe I think maybe Lyla Tom was here the last time talking about it. It's based on positions with the state judiciary and other legal positions in the state of Hawaii. So, they've done that comparison research and that's the paid position classification that they have placed the ALC's position. So, that we can't change because it's provided for in the charter.

I did have extensive discussions with DHR about within that charter requirement. Is there a way—You know, that SR-26 position classification, it has different steps with different numbers in it, which I'm worried about in the last few months. So, it does have all these steps with all the different potential salaries. And, I've learned that typically (inaudible) position classification plan, you are targeted in the entry step or the next step and then it's basically a lock step each year, up one grade parity with bargaining Unit 13, which is the professional services bargaining unit, Unit 13. So, in this particular case, and it's mentioned in mission's memo, January 30th. In this case, if you stuck strictly with the position classification plan the ALC would've gotten a 3.5% increase in January 2016. However, with subsequent discussions with Mayor, he is willing to delegate to this Commission the authority to set that salary within that position classification subject to whatever budgetary restrictions there are stated in the Mayor's directive, which is annual kind of thing. And that's because the City does not have unlimited funds.

Marks: Let me see if I understand you correctly. If the Mayor delegates it to us, he would allow us within the SR-26 to place it within any of those steps subject to funding?

Corp Counsel Leong: That's right and the funding part of will be expressed in that Mayor's directive.

Marks: Okay.

Corp Counsel Leong: So, by way of example, I looked in previous Mayor's directives to see what kind of budgetary restrictions they might have imposed for other positions. One, there was a lump sum set amount increase for another position. There was percentage, maximum increase. So, within that percentage maximum

increase, you would be able to set your salary, and that's all the function of—I mean, not just all the—It's a function of a lot of things, you know, that are way beyond—I mean, it has to do with collective bargaining, funds available, the philosophies and values of the budget and fiscal services director, the Mayor's priorities, etc., etc., etc. That's way beyond me. I don't promulgate the Mayor's directive. So, those are basically the two parameters would be applicable to this Commission setting of the salary. So, that's on that point. Did you want to talk about that one before I go into the salary for fiscal year '15? And, that would prospect, so starting with FY16 and the Mayor's directive for FY16 will be issued in June. It's typically issued in the last two weeks of June after the counsel has adopted the executive budget but before the start of the FY year, which is July 1st. So, it's very little time, and it's really a function of the amount of money that we have for salaries and (inaudible).

Chairwoman: So, FY15—

Corp Counsel Leong: That's the next subject.

Chairwoman: Oh—

Amano: So, Chuck does it mean we can change our budget or is it where the budget now is it fixed?

Mr. Totto: Where the budget right now it's fixed. For FY16, if the Commission decided that it wanted to get more than the budgeted amount—

Amano: Yes—

Mr. Totto: ...for Laurie's salary, we would need to find budget savings, my understanding is, and we would work with the fiscal officer to see if there is such. But because it's FY16, we don't know.

Amano: I mean, let's start from the beginning, which is right now the budget's salary is \$80,378 set by Ember.

Mr. Totto: Right.

Amano: But I'm hearing that we can change that number to something in the SR-26 levels.

Mr. Totto: Correct.

Amano: And that's the primary thing—

Mr. Totto: Right—

Amano: ...and as far as funding the money, then we figure that out.

Mr. Totto: Right, exactly.

Amano: Okay.

Mr. Totto: I mean, fiscal has helped us in this area before.

Amano: Yeah, okay.

Marks: I have a question. Is there anything that you need from the Commission or from Chuck to go to the Mayor to make sure that the delegation happens? Is there anything we need to do?

Corp Counsel Leong: I'm going to providing a copy of this letter to the Managing Director, DHR and BFS. So, they will be all apprised of the Mayor's decision on these two issues. I don't see the 80,000 thousand in Ember's memo, but maybe I'm missing it because there's a lot of stuff in here.

Mr. Totto: I don't have that memo with me, but I know it's there.

Corp Counsel Leong: Okay. I'll look for it again.

Mr. Totto: But I apologize.

Corp Counsel Leong: Because I don't see it. The numbers in there?

Mr. Totto: I can't remember if it's the number or—

Corp Counsel Leong: ...the concept?

Mr. Totto: ...or if she's saying 3.5% as of—

Corp Counsel Leong: January 1, 2016—

Mr. Totto: ...January 1, 2016, right.

Corp Counsel Leong: Oh, you must've done a calculation.

Mr. Totto: Actually, I may have just asked Kathy, and she showed me this is the number—

Corp Counsel Leong: Okay.

Mr. Totto: So, I'm not sure if it's on the letter or if it's—Actually, it is in the FY16 budget.

Corp Counsel Leong: Okay. So, there's a difference between the budget that was submitted last Fall that Chuck and I. I mean, I submit for a Corp, and Chuck submits for Ethics, the budget that's submitted to BFS in the Fall and they decide what they want to do with it and then they submit that to Mayor who then submits it to the City Council. I forget when they did that, in January—Oh, I think it was—

Mr. Totto: March—

Corp Counsel Leong: Which March, March 2nd, beginning of March, by March 2nd. So, he might've done it the last day of February. So, he submits the executive operating budget and the capital budget for the City Council. They are in the process of considering that budget. That budget is just budget. Because as Chuck has said, they're doing whatever they want with it. I mean, you know, they took out this huge chunk of funding from my department. It's okay, I think we'll be okay now. But they took a major portion of funding and they slashed \$4,000 in copying costs. And, I'm not sure why, but anyway I've already testified on it, submitted testimony.

Amano: With the Mayor's directive, does that mean that the Ethics Commission will be doing it's budget without fear of (inaudible) vetoes subject to Council?

Corp Counsel Leong: I can assure you the Mayor would not line item veto this particular issue. It does not rise to the level (inaudible) (inaudible) veto which is a serious (inaudible).

Amano: Yeah. Because the Ethics Commission does need to have a certain degree of autonomy--

Corp Counsel Leong: Understood—

Amano: ...you know, to decide its resources—

Corp Counsel Leong: Right.

Amano: ...in the appropriate place. That's all I'm asking.

Corp Counsel Leong: And, I recall that when Ms. Shinn was here explaining her decision. And, I think it was in February, you know, she explained how every department is not getting what it wants. And, this Commission, like really the Council because they don't even get what they want. I don't get what I want. Everybody is subject to—

Amano: You know, I mean, that's fact of life. Somebody is—

Corp Counsel Leong: Yeah—

Amano: With the line item veto is something that's not, something that I think we can tolerate because we have to decide our resources, whatever the resources might be.

Corp Counsel Leong: Yeah. I'm not a gambling person, I could almost guarantee you there will be not a line item veto for the Ethics Commission.

Amano: Good. That's great.

Corp Counsel Leong: But as I was saying the budget that we submitted last Fall that the Council was currently considering, that's a different budget, type of issue from the budgetary restrictions set forth in the Mayor's directive because he needs to decide. Once he gets the budget from the City Council, what he is going to do with the excluded exempt employees. And that's always done, it happens with collective bargaining. So, anyway, it's quite a complicated document. I don't understand all of it.

So, if I may, with regard to the 2015 salary, Mayor totally appreciates the work that this Commission does, and its support staff. Every single one of you. And, we did talk about increasing the ALC FY year salary from \$78,996, which was approved by mission's memo of January 30th to the number of \$82,140, which is the amount, I believe, the Commission had authorized in its meetings. And he is fully apprised of the Commission's memo. He is totally aware of all of the discussions that this Commission has had on this subject. He feels, however, that given the efforts made by mission to reconcile all of the historical information and the restrictions set forth in the charter and the ROH, as well as the Mayor's directives that were applicable for this FY, he believes that the ACL is being fairly compensated and has declined to retroactively adjust her salary for FY15.

So, you'll see in my letter that there are certain statements that forth in mission's memo that will be deleted because she basically has set forth would happen for FY16, but since he's choosing to delegate to the Commission within the parameters we just discussed, the authority to set the ACL's salary for FY16, there's language that will not be given effect for FY16.

Chairwoman: So, just to clarify. Ms. Shinn set it at 78 thousand and something, but then the Mayor is saying okay to go to 82, but then—Okay, I'm confused. So, he's saying back to 78—

Suemori: Holding it, 78,996.

Corp Counsel Leong: Correct.

Marks: Except we need to check the percentage increase bumped her to the 80,378.

Corp Counsel Leong: The 78,996 per mission's memo is actually a much higher step increase than she would've been entitled to under the pay classification plan for parity (inaudible). And from FY13 to 14, she jumped several steps, whereas the parity would be 13 (inaudible) step.

Mr. Totto: If I can add, I understand and appreciate Ms. Leong's approach, the Mayor's approach, but was missing from Ms. Shinn's analysis, and she admitted she did not look at anything prior to her coming on board and Mayor coming on board in 2013. And, as we pointed out to the Commission before, before the ALC position was even created, we asked DHR what do we do about when the Commission give raises for this position? And, we were told definitively, and it was copied to then director and the division head for DHR that, yes, the Commission could do that based on—Actually they said based, the Commission has discretion to do that, they didn't say based on what. Ms. Shinn in not looking at that, unfortunately, was not aware of the history. And, we weren't just picking numbers out of the air. We were going on following the DHR memorandum from 2010. And, I just want to make it clear for the Commission. I understand what the Mayor has said. I'm concerned that the Mayor may not have been fully apprised because Ms. Shinn was not fully apprised. But in any event, that is why if you look at it from the ALC's point-of-view, the Commission's point-of-view, the staff's point-of-view, you would see that we were following everything we were told to do by various departments until Ember's memo decided to cut that off. I just want to make that clear for the record, and again I appreciate all the work that both the group of two has done, the Commission has done and also—

Lilly: So, the Mayor is not going to delegate 15 retroactive?

Corp Counsel Leong: No.

Lilly: Is not? Because that wasn't my impression in our meeting.

Corp Counsel Leong: Well, I specifically I remember the group asking Mayor to consider retroactively adjusting 15. So, a delegation of authority to establish '15 would be inconsistent with that request.

Lilly: With what?

Corp Counsel Leong: With that request.

Marks: Retro—

Corp Counsel Leong: Well, if he had, if the request had been to retroactively delegate to us, then we wouldn't be asking him, would you retroactively adjust, in first that he retains the authority to set the salary. And, I have to assure you he has spent much more time on numerous occasions on this salary for this one position than

any other position in the City. I must assure you he has spent a lot of time on this issue.

Lilly: I'm disappointed he has not delegating us '15 because we had the savings and if we had—We think we have the authority, if he delegated it to us, we used our savings then we could've set the salary with those savings. So, I'm disappointed in that. And, I'm going to refresh your recollection, Ms. Leong, about our very clear discussion with the Mayor about the legal counsel's salary should go before the Salary Commission. We had a very clear discussion about that. And, his reaction to that, and he'll remember this, was "you know, his salary comes up all the time. I hear the legal counsel's salary. It seems like every time I turn since the start of this job, I hear about the legal counsel's salary." And, that was the intro that we thought that it should go before the Salary Commission. And, my impression from his reaction because he keeps hearing about Chuck's salary so much, that it ought to go before Salary—It should be in the Salary Commission, then he wouldn't have to deal with it anymore. He wouldn't hear about it anymore.

Marks: But, I think what was said was consistent with that, what was not consistent was the associate legal counsel.

Lilly: No, no, Donna was saying that she didn't remember any discussion about his salary and we had that discussion because he was favorable to not having any further discussions about the legal counsel's salary in the future. Does that sound—Do you remember that?

Corp Counsel Leong: Yes. But, I think there's different ways to achieve it.

Lilly: Yeah. But the Salary Commission is one way to do it, and then it would never in the Mayor's lap again, except as a budget item.

Marks: You have to go through the Charter Commission and then the voters, right. So, there's no guarantee.

Lilly: Right. But my impression is that if we had the support of the Administration, something doable.

Marks: I didn't hear that the Mayor was or was not going to support the request to have the Charter Commission look at it.

Corp Counsel Leong: He really has not been presented with any of the Charter Commission amendments, and I have to say just dealing with all of the different divisions of the charter, it really depends on what it says. There are certain provisions unrelated to this Commission, that I'm going to submit because it's causing havoc in the City. I've gotten to the point where I've called the Charter

Commissioner, who in the minutes supposed to be presented the thing, and it's like I don't know, I didn't know, I didn't present it, it was the other guy.

Chairwoman: Okay. So, at this point, the next step is we'll be waiting for that letter.

Corp Counsel Leong: I have copies.

Chairwoman: Okay.

Corp Counsel Leong: Should I give it to Lisa?

Chairwoman: So, are there any additional stuffs that we (inaudible), is the group going to be meeting again or—

Amano: We're coming to the Commission for direction, report back—

Chairwoman: Okay.

Amano: ...and you tell us what you think. I do have some recommendations to make—

Chairwoman: Sure.

Amano: ...but I'm wondering if it should go into executive session on some of them because it does pertain specific personal items. I mean, I don't know, I'm asking—

Mr. Totto: Yeah. If you're looking, if you're going to discuss—definitely going to discuss the quality of staff employees, and you may, looking at salary amounts and so on, but if you're just talking numbers and without any implication towards the quality of the employer, you're probably okay to do it in open session. But my recommendation would be to be cautious because that would be inappropriate to have an open session. So, you may want to go into exec session on that.

Amano: Okay. With regard to Step 3, which is the easy one to me, again. I would recommend that our group meet with the Managing Director and work for getting both the ELS and the ALC's salaries before the Joint Commission for recommendation to be on this 2016 ballooned recommendations and if the Commission is in agreement with that, perhaps our group can move forward. It really doesn't matter what the Mayor said or didn't say at this point. If he's going to oppose it, he's going to oppose it. If not, and he supports it, we'll find out real quick. But, I think that the Commission if everybody feels the same way, who want to have this under the Salary Commission, then I think we should put our efforts there. So, that's a clear directive on the issue 3.

Mr. Totto: And, if I may, on behalf of the staff, we've discussed this very often over the years and we have back in 2010, I realized that at some point, you know, the

salary for the ALC is not going to what attorneys are getting or can get, corporation counsel or prosecutor's office and so on. So, bottom line it's fine with us because it is the one way to make sure that we're as close to being on an even plain field as we can be.

Amano: So, that's the third piece, and I don't know if—

Lilly: Do we need a resolution?

Mr. Totto: I think it would help to—You know, I would say we do that later, but actually resolution might be a good thing to have right now about this because it will give the group direction should the group need do more work on this.

Amano: Yeah, this is going to take work, but at least we have direction.

Chairwoman: Okay. Could I have—

Marks: So moved—

Yuen: Second.

Chairwoman: All in favor?

All Commissioners: Aye.

Chairwoman: So moved.

Amano: So, the second piece to me is going forward and, of course, we welcome the Mayor's delegation. And, I was just looking at the classification schedules for Step 26, Step M rather—Was it SR-26, sorry.

Marks: SR-26.

Amano: Yes, SR-26, sorry, step M for 2013, because I don't know why I have the newer stuff is at 85,416. So, we may have the ability to put in the number that we want for our ALC for FY2016 within the steps as designated.

Lilly: Correct.

Amano: And, hopefully the future beyond on that will be through the Salary Commission. But for FY16, let's try that.

Mr. Totto: Again, speaking on behalf of staff, I think that would be a great way to go. And, what we will need to do is talk with fiscal, our fiscal officer, and say what are the limitations and how do we go about—

Amano: Well, and I would recommend because we want to speak the language to look at the chart, the SR-26 thing, and we know the number, we think would be appropriate, and we pull out of the step and say this is what we want. Because that's what they want to hear from us.

Mr. Totto: Right.

Amano: So, let's do that.

Mr. Totto: Okay. And, that would consistent with the types of increases that occurring for corporation counsel, the prosecutor's office, the office of council services in terms of the 4% increases?

Amano: Well, you know, if we have to go that deep, we're going to get into some difficulty. I would just say that this is the number we think is appropriate given the levels that we're talking about and the history and workload, everything.

Mr. Totto: Okay. However, it is discussed that is fair approach—

Amano: So, I think, we just don't go too (inaudible) come from. I just want the outcome—

Mr. Totto: Yeah.

Amano: So, that's FY16. So, for FY15, I think the handwriting is on—

Mr. Totto: Can I take a moment? It's been taxing at times to have to be the one who is listening to the issues regarding her salaries, so I don't know if that's—But, if we could just take a short recess.

[5-minute recess]

Mr. Totto: Okay. We're back on the—being recorded.

Chairwoman: Okay. Commissioner Amano, you were wrapping up?

Amano: Yes. Going to the first item, which is FY15—

Mr. Totto: Well, for FY16, did we have a vote, I'm not sure if we did—

Amano: Oh, no, do we have to do something, because I think we still have to work on the budget, right?

Mr. Totto: Yeah. Okay.

Amano: Now that we have the delegation, we can go and make the fix, and I don't think anybody had any objection to looking for a number that would be consistent with what we hoped we would be giving them.

Mr. Totto: Okay, thank you.

Amano: Does that sound right? And, it does fall in the steps, I think. And, as to the first one, which is FY15, and our inability to go back and change that from the 78, whatever number it is. You know, we spent on a lot of time on it, I think we have to let it go. And that's my thinking. I realized I wasn't part of history, and I don't really understand all the things that brought us here. Continue to fight over that issue seems to be me to be distracting and time consuming. And some feels (inaudible), and that's my thinking on that first issue.

Mr. Totto: My only, I agree—A lot of times been spent, a lot of energy, the Commission level, staff level, Ms. Leong's level, the Mayor, and so on. The only thing I feel a little uncomfortable about is, not having read this letter yet. I don't know—

Amano: I'm okay with deferring it.

Mr. Totto: Yeah, I was going to ask if we could defer for a month on that.

Amano: My thought off at the top of my head.

Mr. Totto: I'm not suggesting we're going to jump in and start (inaudible) or something. I just want to take a look.

Amano: And, finally for the record, I really despise the way this issue has been handled with our person sitting here like this. It just feels horrible, and I apologize. I don't know any other way to—

Mr. Totto: I appreciate that very much. I know Laurie will also—This has been very difficulty every time because all of us know what we get paid reflects the type of the person we are, what type of professional we are. So, it's very hard to hear it over months. But, thank you very much for your comments, and I'll pass it on to Laurie.

Chairwoman: Okay, great. Thank you. So, going onto Item C.

IV.C. – NEW BUSINESS – For Discussion: Staff's Proposed Fiscal Year 2017 Operating Budget for the Ethics Commission.

Mr. Totto: Right. I'm going to keep this at a high level, because, I think we're probably all pretty tired at this point, and I don't want to have to go through numbers, numbers and numbers, but I do want to talk about Item C, Staff's Proposal for Fiscal Year 2017 Operating Budget.

The main concern here is having sufficient resources, 1) to handle our complaints requiring investigation; 2) to have staff resources that are sufficient to do what this Commission thinks that we should be doing. Right now we are completely reactive Commission, excuse me, Commission staff. In other words, other than training—I should training aside, if somebody asks for a request for advice, they get a request, a response back. If somebody submits a complaint, we evaluate the complaint. If we are looking at an issue in media or we see one case might spin into another, the staff can open its own investigation. Again, we're just looking at things mostly coming into us as oppose to going out from us.

Chairwoman: So, I guess, all the Commission members understand the work load, how its been difficult it has been, and you described all of that. I guess, I'm wondering is how realistic is this to be honest because it's such a tremendous increase—

Mr. Totto: Right.

Amano: Before commenting, I wonder if could add to that thought.

Chairwoman: Okay.

Mr. Totto: Sure.

Amano: Because I also reviewed it and was surprised. And after what we just went through, I'm a little disheartened. I'm wondering if it's possible to—I can see this as part of a long range plan of some kind. And, maybe that's where our Commission should be extending a little bit of effort and, you know, aiming toward having three investigators, aiming toward having this, projecting the numbers, projecting the budgets, having plan to kind of get there. But to throw it out to everybody, we're inviting—

Mr. Totto: Those are both very good points. A little bit of history, in 2012 we started meeting with DHR and DHR, Lyla Tom, who was here before, it was very helpful. And they said you need to look at what type of Commission staff do you need? For instance, do you need a trainer? Somebody who's going to make sure all the training is done, so you don't have to pull a lawyer over to do it, and I think luckily we have two good trainers and our lawyers, but you don't always have that and so on. So, we put together a list for them at that time, which actually was from our point-of-view, a long term approach where we would be adding certain people. The problem is that—this is no one's fault necessarily, but the budgets weren't there, the funds weren't there and so nothing really changed. But, I appreciate that, and if this were to be—when this is brought to the attention of others, we'll try to go back to that initial 2012 approach. And, of course, then the Mayor is changed and the administration has changed. So, their priorities change. I didn't have any promise from the prior administration or anything like that.

Amano: I was also wondering if perhaps a member of our Commission might be involved with that process, our Chair perhaps, you know, so that it wouldn't be a surprise to the Commission either to sort of have this enormous budget, 50% essentially.

Chairwoman: So, is your—Because you asked for two more investigative position?

Mr. Totto: Right.

Chairwoman: Is that consideration that the AG is now giving you support or is it exclusive of that—

Mr. Totto: It's exclusive of that.

Chairwoman:because you don't know how long that—

Mr. Totto: Yeah. We don't know how long, what degree and how it will work. But it is exclusive of that, and also it's important that—I'm all for sharing resources, but I will tell you from my own personal experience back when I was consumer advocate, we were represented by four AGs deputies, and the auditor came in and said, you either have dedicated AGs that only consumer advocate work or you need to have the consumer advocate get their attorneys. And, for the reason for that was it seemed invariably whenever we need the AG, our deputies were already focused on some other case. So, like I say, we want to look at how we can share resources, at the same time we do need to have a presence even if the AG investigations work out well. We still need to have a, what I call, a coordinator or supervising investigator here, at least that one.

Chairwoman: So, when is the budget due?

Mr. Totto: I haven't been told yet. What I want to make sure. This was not necessarily for you guys to vote up or down. This was to start a discussion so that the issues can be brought up for the next time. And, I was trying to get a little farther along, but I realized depending on who or how many people you add, that drives all the other expenses. You know, how much space do you need, computers, desks, etc.

Chairwoman: Right.

Marks: Can I make a comment. I think the budget request has to be compelling to be successful. And, I would like to help it be compelling, but what I don't see in this is maybe a background document where, you know, distinguish your workload from the workload of other legal offices, how they're set up, the City, the State, the judiciary, other states whatever. Because, I think, without that you're not going to have a chance. And the other thing is that if it doesn't go through, you

also need to be working on a Plan B even other than the AG's office to so you can function.

Chairwoman: I think that's a very good point, but the irony of that is that, I think, you have actually presented that in the past and didn't get this.

Mr. Totto: Well, done that presentation in the past. Actually, I pulled out my January 4th, 2013, and actually I was told this was too long and not to send anything—

Marks: Well, then you need to develop it into a chart or bullet point—

Mr. Totto: Excuse me, I think, you're absolutely right. I've done it, I've done it, I've don't it. It depends on who we're going to sale—and, I'm try to figure out who we are going to be talking.

Chairwoman: That's one of the reasons. I mean, her point is actually one of the reasons why I feel this isn't realistic because you've gone through that and this is even bigger jump. You know, this is even a bigger jump then when you did do that analysis that present that. I'm not trying to diminish the validity of it, I'm just saying it just makes it seem more unrealistic in light of the history.

Mr. Totto: Okay. If you're going to take getting zero increases as the status, then—

Chairwoman: No, I'm not saying that.

Mr. Totto: Okay.

Chairwoman: I'm not saying that—

Mr. Totto: All right. I don't mean to be argumentative, I'm just trying to figure this. Where you want me to go with this.

Chairwoman: Right.

Mr. Totto: And, I don't mind going back to that where I had the charts, where I got the 12 different things that we should be doing pro-actively including changing laws that—

Marks: No, no that isn't what I'm talking about. What I'm talking about is selling, why you're—

Mr. Totto: Excuse me, if I could finish.

Marks: Okay, I'm sorry.

Mr. Totto: ...comparisons with HPD and their professional standards office, where they do administrative cases, in a number of cases they do. Comparing it with the state's Ethics Commission in a number of complaint cases. They do a (inaudible) number attorneys, etc. So, I agree, and I have no problem updating this. And, it's obvious that would be certainly helpful for the Commissioners to understand that kind of background and that kind of comparison. My comment to you, my concern is if we say, "okay, let's go and maybe we can get one more investigator." Well, we tried that and it didn't work. And there's a problem with government and if you don't ask, you don't get. And, if you don't ask, you're assumed that you don't need. Now, those are unfortunate precepts to have to work under. But, I'd be happy to go back and brush this stuff up, get new statistics, take a look at what's going on. And to answer real briefly, the Plan B will always be to have to prioritize. I mean, we're never going to have all resources to do all the cases that we'd like or think we should do. So, Plan B is always to prioritize and figure out this case whether we've got an AG investigator or not, this case is going to have gone by the (inaudible) compared to another case. But, thank you, I appreciate that, and it depends on which audience you're talking with. Because if you're talking to the BFS, the analyst, they just want to know the dollar amounts. They seem much less interested in the why, what you're trying to do and so on. And, as you go up the chain of command, you see the people starting to look at the bigger picture. But, those valid comments.

Chairwoman: Yes.

Corp Counsel Leong: When you take comments, may I participate?

Chairwoman: Sure; briefly.

Marks: Go ahead.

Corp Counsel Leong: I just wanted to share with you with the process as I know it. I think I've been through two budget seasons now there was two burning curves for both (inaudible). So, it's a little early to be doing 2017 budget planning. Only because 2016 has not yet been adopted. So, the period of time that this 2017 fiscal year is applicable for would be July 1, 2106 to June 30, 2017. And, what I've been told you basically as soon as the fiscal year budget has been adopted and they're required to adopt it by June 15th of this year for the Fiscal Year 2016, as soon it's adopted, start on your '17 budget, okay.

So, I think people take what's been approved for 2016, but they must super-copy it and they do some kind of adjustment to it. We get budget guidelines. I want to say maybe about September, October, and then we get a calendar by which the departments have to submit their request and budget issues, and what are called budget issues. And, those are things that are not in accordance with the budget guidelines to Budget and Fiscal Services. So, we submit it to them and they do their thing with it and we have discussions with them. And, I know, Chuck has

had a lot of discussions with them. And then we, starting in October or November, December, a period for three months, BFS works with all the agencies and managing director and the managing director will make a recommendation to Mayor. And, I don't know what happens there, they must have discussions and the executive operating budget is submitted by the end of February and Council— We're in that session now between March and June 15th, Council has all of its budge hearings and so forth. So, I wanted to share with you what the process is and I totally agree with Chuck about getting out ahead of it because in the last— The very first year that I did this, way behind, because I didn't know what was going on. But last year, a little better. Try to plan a little bit better and this year soon as the Fiscal Year '16 budget is adopted, June 15th then we start really planning to submit something.

Chairwoman: Okay, thank you. Sounds there is some time and then you talked about getting some more information from Chuck. So, let's do that and then come back to—

Corp Counsel Leong: Thank you.

Ms. Iwasa: May I also comment, public—

Chairwoman: Sure.

Ms. Iwasa: Thank you. I'm so glad I was here. I mean, you've been here for a while almost two hours now, but I was over at Honolulu Hale. I'm Nathalie Wasa, CPA and also a certified (inaudible) examiner. And some of you may be aware I supported the Ethics Commission in the past and I continue to do so. And, I just wanted to offer a perspective, I think, from the public. Because what we have seen here, the way the City is working with the Ethics Commission, the way City Council is working with the Ethics Commission, is there has been a lot of friction and, I think, truly what needs to happen is a move to be more independent because when the Mayor is under investigation by the Ethics Commission he's not going to offer, give you more resources. He wants to hold back. Same thing with the City Council. Five members now are under investigation and they're not going to want to put more resources towards the Ethics Commission. There's a total conflict of interest between the two branches of government. And, so, I think, really what you folks should be looking at seriously is looking at the Inspector General or—I forget what city it was. I had looked at a couple of years ago had something that wasn't quite Inspector General, but they were more independent. Might have been somewhere in Ohio. But, really seriously look at that because, you know, when we have a down economy like we did for so many years, that's when people are tempted when they want, they feel the need, and if there's an opportunity to take advantage of their employer, that's when it will happen. And the thing we don't know what that costs us. We don't know until there's some kind of investigation, until we dig into it.

And, I apologize I forge the number that Chuck had mentioned in the budget hearing regarding the number of hours and one or two staff persons. But basically what boiled down to now with the recourses you have now, you have enough to do every investigation to take two days, two days per investigation, that is so unrealistic and that means, you know, they can't do that. And what happens, what's the consequence of that. Well, then other investigations that are lower priority don't get investigated. They don't get done. So, I just ask to really look at that, being a little more independent. I support more resources. I don't think it's too really to start talking about the Fiscal Year 2017 budget, I think that's a good thing to do, especially given the relationship that's been going on here for the last couple of years. So, I support all of you folks and, You know, I mentioned again in the budget hearing this morning, you guys need more resources. So, if there's anything that I can do to help make what you're doing easier, please let me know because I think it's crucial to what happens with out City and how our money is being handled.

Amano: Thank you.

Chairwoman: Thank you, Ms. Iwasa. Okay. Going on to Item D, Request for Motion to Approve and Adopt Staff's Proposed Guidelines on the Federal Credit Union issue.

IV.D. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on Use of City Resources to Support Certain Federal Credit Unions.

Mr. Totto: Yeah. I just wanted to take a pulse on when people need to go. We have an advisory opinion when you need to leave today, because we do have an advisory opinion also that we like to—

Chairwoman: Need to get out.

Mr. Totto: So, I want to see how we can plan the time. So, if most of you're here until we're done, that's great. If some of you need to leave right away--

Marks: Within limits.

Mr. Totto: As my wife says, within reasonable limits. Okay. So, I'll move ahead then.

Amano: Can I must make the motion—

Mr. Totto: For—

Amano: For approval and adoption of your proposed guidelines on the City Resources to Support Certain FCUs.

Yuen: I'll second.

Chairwoman: All in favor?

Amano: So, now is the time to discuss. But I don't have any questions, I think it's fine.

Mr. Totto: The only thing I want to add is that we did finally get a response from Department of Human Resources today. They said, fine. They have no comment.

Chairwoman: Can I have a motion to pass—All those in favor?

All Commissioners: Aye.

IV.E. NEW BUSINESS – For Action: Request for Motion to Approve and Adopt a News Release Policy.

Mr. Totto: Okay. That brings us to Item E, For Action Request for Motion to Approve and Adopt a News Release Policy. And the policy itself is open for. Do you folks want to take a look and discuss it before, I'll leave it to the Commissioners for further discussion.

Amano: So, before making the motion or otherwise, I just want to comment I see that—I'd like to see a clearer articulated policy regarding our news releases. And, the reason that's important is because it will direct what that news release is going to be. It needs to be consistent with, I think, our mission and all the other things that we required by charter to follow. But for instance, the language it says, you know, the purpose is to summarize and communicate the actions, the positions taken by the Commission as well as their impact on the public and integrity. Then we start to get into some mushy judgmental areas that, I think would not be a good idea to be part of a news release. So, I could favor a more concise policy and that will (inaudible) my second concern which is there is no review of the news release prior to issuance. And maybe we're too small to do that. Maybe it's not appropriate because of timing, I don't know that. But with no clear direction and no review, we don't have a policy. We have procedures that are, I think, pretty good. But the policy is really my main concern. That's all I wanted to add.

Suemori: **Can I make a motion to defer this to the next meeting?** Because it says here's the policies and procedures and then it says here's the purpose. What is the policy with purpose?

Amano: I didn't want to come empty handed so I did try to look for other things. And, I noted for instance, the University of Hawaii at Hilo has a media relations policy and procedures, spelling out clearly policy and then the procedure. And, in the policy it's tight, and it should be. But for instance, it says the University's spokesperson will provide broad general information in responses to university

inquiries, however, for matters that require more detailed information, administrators and faculty will respond accordingly.

So, you have a policy.

Chairwoman: So, because this has been on the agenda couple of times, deferred a couple of times, but it sounds like it's still not where it's at, or where you want it to be, then maybe—

Amano: I'll be willing to take a shot at drafting something for consideration.

Chairwoman: Okay. Why don't why we do that, and we can defer it.

Amano: Is that okay?

Suemori: Yeah.

Chairwoman: Yes. All right.

Mr. Totto: If there's anything I can help with you, I'd be happy to do that.

Amano: I'll work with you.

Mr. Totto: We asked the Mayor's, those guys, they don't have a policy, but HART has one. So, this is basically what HART's looks like.

Amano: The procedures are real good. I think we just need to be really tight on the policy, and I notice when going through the handbook that we have, that there's some really good language on direction. So, maybe we can do that.

Mr. Totto: Okay.

Chairwoman: Okay. So, at this point, we need to go into executive session.

Mr. Totto: Yeah. So, we're done with the open session matters and now executive session.

Chairwoman: Can I have a motion to go into executive session, please.

Suemori: So move.

Amano: Second.

Chairwoman: All in favor?

All Commissioners: Aye.

EXECUTIVE SESSION DISCUSSION REGARDING ITEMS V.A. and B HAVE
BEEN REDACTED

Chairwoman: Okay. So, can I have a motion to move out of the executive session?

Amano: So move.

Suemori: Second.

Chairwoman: All in favor?

All Commissioners: Aye.

Chairwoman: So, we're back in open session. I don't have to report anything, so—

Mr. Totto: No. It was deferred, so—

Chairwoman: Right. Okay.

Mr. Totto: You don't have to worry about reporting anything.

Chairwoman: Okay. So, then I'd like to have a **motion to close the meeting of open session.**

Suemori: I'll move.

Marks: Second.

Chairwoman: All in favor?

All Commissioners: Aye.

Chairwoman: Thank you.

VI. ADJOURNMENT